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HAC S&I TEAM REPORT

ISSUE: Trial Period and Selection Out Processes

° HAC proposes a change in the trial period to five years for new employees to allow for evaluation in an overseas environment.

° HAC notes a recommendation for a similar review after 20 years of service to determine if the officer has senior executive potential or should be retired.

COMMENTS:

When the proposal for a change in the length of the trial period was under review in 1976-77, it is our understanding that the DDO suggestion for a five year period to allow for two overseas tours was considered but that the other Directorates felt this was too long a period for their employees to have to serve in probationary status. The philosophy behind a five year period would be invalid for the majority of Agency employees who are not hired for case officer assignments and would probably not serve overseas for the Agency at any time during their career. We are not aware if consideration was given to establishing a different probationary period for case officers, but believe such a policy, apart from the inequity of it, would be difficult to manage, requiring constant adjustments in the periods required for specific individuals. All case officers do not begin their career via the Junior Officer Trainee Program; some are internal conversions in the DDO, others by transfer from other Agency components. Even in the DDO, individuals who enter on duty as "case officers" often transfer to other DDO disciplines within the first few years of employment. It would be questionable personnel management to subject employees to two separate trial periods with the prospect of termination without appeal because of a change in career track. Even the five year period would not insure coverage for two overseas tours, given the differing time frames for language training, headquarters desk training, and probably most important, the availability of appropriate overseas assignments. To specifically cover two overseas tours could in some cases create an open-ended probationary period for this one group of employees.

If it is judged essential that the case officer be tested over a longer period of time, adjustments can, of course, be made in the rules and guidelines for administering trial periods for this one group of employees, with appropriate safeguards for individuals transferring into this career track after successfully qualifying in another discipline.

We question, however, if the problems of administering two trial period programs, including the adjustments for individuals transferring into or out of this category after initial employment, would not be greater than utilizing the processes for separation for incompetence and unsatisfactory performance already available [REDACTED]

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The matter of "selection out" and retirement after 20 years of service is covered in the response to question 2 of this section. Apart from the difficulties with the present laws and the requirements therein, separation for other than true surplus conditions or documented poor performance would present problems with the legality of the action. State Department experience with this type of separation should be examined before making any decisions.

The proposed Civil Service Reform Bill contains new provisions for second probationary periods when an individual assumes supervisory duties, but unsuccessful performance results only in reduction to former position, not separation from employment.

Question 1:

What plans does the Agency have to improve the selection out process for unsatisfactory case officers?

Response:

25X1 The Agency policy for separation or "selection out" of employees is provided [] which includes a specific requirement in paragraph i for the identification of individuals ranked in the annual comparative evaluation in the low 3 percent of the grade group or functional category by reason of poor performance. Identification in this low percentile for a second consecutive year requires action on the part of the Career Service, i.e., counseling, downgrading or separation. This particular exercise of identification does not, however, preclude management from taking action at any time to separate an individual where there is clear and documented evidence of unsatisfactory performance, or for that matter one whose talents or expertise are surplus to the needs of the Agency.

We defer to DDO for specific details of how the policy is implemented in that Career Service.

Question 2:

What consideration has been given the recommendation that case officers performance be reviewed at the end of 5 years or the completion of two overseas tours for consideration of selection out and again at the end of 20 years for forced retirement?

Response:

25X1 Agency policy [] requires an annual comparative evaluation of personnel in grades GS-09 through GS-14 by Heads of Career Services through the mechanism of Career Boards or Panels. Most Career Services include the GS-15 grade level in this requirement. From this evaluation exercise comes the ranking of individuals, promotion recommendations and the identification of the employees who fall

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into the low 3% of the grade or category. This annual review and ranking, therefore, automatically provides for a five year and a twenty year review.

A twenty year forced retirement program would require statutory change in the retirement laws which have an age factor related to years of service; many individuals with 20 years of service would not have the necessary age. CIARDS requires 50 years of age and 20 years of service. The Government "involuntary retirement" policy, which requires special approval and is limited to surplus personnel conditions, requires 25 years of service for retirement earlier than at age 50.

Question 3:

Will the Agency continue to assign case officers found to be weak in overseas assignments to headquarters jobs with no further plans for their overseas assignment or utilization?

Response:

N.B. The use of "case officer in this question is interpreted to mean "operations officer" inasmuch as the case officer functions are normally limited to the overseas situation, and the individual with such a designation overseas becomes an operations officer while performing headquarters duties.

Apart from the thrust and implications of this question for personnel management techniques, there is an assumption here that the DDO headquarters and overseas assignments/positions must all be interchangeable, requiring the same talents and abilities of incumbents, and that the best interests of the Service require the constant interchange. We do not believe this is true and would view such a system as unduly rigid, without allowance for particular Agency requirements nor for individual circumstances. An individual who is a weak performer in an overseas situation, may be outstanding at headquarters, and vice versa. This HAC question presents the spectre of penalizing an individual by separation and denying the Agency, e.g., DDO, of the services of a thoroughly competent officer because he or she is, for example, not a head hunter, or alternatively, not a staff officer. It is undoubtedly true that the DDO requires a large complement of interchangeable officers, but there certainly must be areas of specific, if limited, requirements peculiar to either overseas or headquarters which accommodate the assignment of individuals not otherwise suitable for interchange.

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ISSUE: Independent Contractors

We defer to DDO for information on the specific cases cited, albeit some are "borderline cases", and address our comments here to Agency policies and practices.

Question 1 and 2:

1. Is not the use of independent contractors in roles normally filled by staff or contract employees a device to avoid position ceilings?
2. What steps is the Agency taking to prevent future employment of independent contractors in roles that should be filled by staff or contract employees?

Response: Both questions are addressed in this one response.

It is not, nor has it been, Agency policy to hire independent contractors to avoid personnel ceiling charges. The guidelines and standards for determining when an individual is an independent contractor or has an employee relationship with the Agency are provided (revised in August 1976 to amplify the pertinent criteria). These standards are closely applied by the Office of Personnel when reviewing contract requests, and whenever there is a question of category utilization, the matter is referred to the Office of the General Counsel for determination.

It is always possible, of course, that over a period of time an independent contractor may develop an employee-like relationship, and it is the supervisor's responsibility to request review and appropriate change in status when this happens. In addition to this supervisory responsibility, the Office of Personnel reviews the status each time a contract is renewed, amended or rewritten.

As an aid to determining the category of individuals hired by the DDO, that Directorate has issued several internal guidances to further clarify the status of employment and has instituted an internal review by CMS prior to submission of contract requests to the Office of Personnel for action.

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